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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/913,643	10/19/2001	Mika Jokinen	TUR -115	4103	
32954 JAMES C. LYI	7590 07/11/200	7	EXAMINER		
100 DAINGERFIELD ROAD			FUBARA, BLESSING M		
SUITE 100 ALEXANDRIA	A, VA 22314		ART UNIT	PAPER NUMBER	
	,		1618		
			MAIL DATE	DELIVERY MODE	
			07/11/2007	PAPER .	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
09/913,643	JOKINEN ET AL.	
Examiner	Art Unit	
Blessing M. Fubara	1618	

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The MAILING DATE of this communication appear	ars on the cover sheet with the d	orrespondence add	ress
THE REPLY FILED 12 June 2007 FAILS TO PLACE THIS APP	LICATION IN CONDITION FOR A	LLOWANCE.	
1. The reply was filed after a final rejection, but prior to or on this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a Nor a Request for Continued Examination (RCE) in compliance time periods:	the same day as filing a Notice of ving replies: (1) an amendment, aff tice of Appeal (with appeal fee) in o	Appeal. To avoid aba fidavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)
 a)	dvisory Action, or (2) the date set forth		
Examiner Note: If box 1 is checked, check either box (a) or (TWO MONTHS OF THE FINAL REJECTION. See MPEP 70	b). ONLY CHECK BOX (b) WHEN THE	-	•
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of extunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL	on which the petition under 37 CFR 1. ension and the corresponding amount thortened statutory period for reply orig than three months after the mailing da	of the fee. The approprinally set in the final Offi	iate extension fee ce action; or (2) as
 The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exter a Notice of Appeal has been filed, any reply must be filed AMENDMENTS 	nsion thereof (37 CFR $41.37(e)$), to	avoid dismissal of th	
 The proposed amendment(s) filed after a final rejection, I They raise new issues that would require further contains the contains and the contains a final rejection. 			ecause
 (b) ☐ They raise the issue of new matter (see NOTE belown) (c) ☐ They are not deemed to place the application in bet appeal; and/or 		ducing or simplifying	the issues for
(d) They present additional claims without canceling a NOTE: (See 37 CFR 1.116 and 41.33(a)).	corresponding number of finally rej	ected claims.	
 4. The amendments are not in compliance with 37 CFR 1.12 5. Applicant's reply has overcome the following rejection(s): 		empliant Amendment	(PTOL-324).
Newly proposed or amended claim(s) would be all non-allowable claim(s).		timely filed amendme	ent canceling the
7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is provided the status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 24-33. Claim(s) withdrawn from consideration:		II be entered and an e	explanation of
AFFIDAVIT OR OTHER EVIDENCE			•
8. The affidavit or other evidence filed after a final action, bu because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e).	t before or on the date of filing a N d sufficient reasons why the affidate	otice of Appeal will <u>no</u> vit or other evidence is	ot be entered s necessary and
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to o showing a good and sufficient reasons why it is necessary	vercome all rejections under appe	al and/or appellant fa	ls to provide a
10. ☐ The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	n of the status of the claims after e	ntry is below or attacl	ned.
 The request for reconsideration has been considered bu See Continuation Sheet. 	t does NOT place the application i	n condition for allowa	nce because:
12. Note the attached Information Disclosure Statement(s). (13. Other:	(PTO/SB/08) Paper No(s)	Mon	
	SREENI PADMANABHAN		

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SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The solubility rate of any fiber is an inherent characteristic of the fiber and the argument that the fiber of the claimed invention has unique solubility rate from that of Ahola is not persuasive and there is no factual showing providing solubility data of the claimed fiber and the Ahola fiber. Claim 30 is a product-by-process claim directed to biodegradable silica fibre that has a certain solubility rate in simulated body fluid and this certain solubility in the simulated fluid is a characteristic/property of the fiber such that any fiber in same environment, such as the simulated body fluid, would inherently have same solubility rate. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps and "[e]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

Contrary to applicant's argument that most of the fibers of Ahola's example 2 did not dissolve in vitro, it is noted that page 15, lines 12-15 discuss the disolution of the fibers and lines 14 and 15 specifically states that "almost all fibers had integrated well into the surrounding connective tissue," it is further noted that on page 5, lines 15-18 disclose that the fibers "dissolve totally during the period desired when they are in contact with body fluid. ... and controlably," which further supports the fact that the fibers of Ahola dissolve controlably. Applicant has not factually shown the dissolution of the Ahola fiber to be 20 times slower because the conditions of example 2 of Ahola appears to be different from that of the claims for the following reasons: i) Example 1, page 15 at lines 14 and 15 specifically states that almost all the fibers are integrated into the tissue without specifying the time it took for the fibers to be integrated into the tissue and the amount of fibers integrated into the tissues; ii) Example 5 at page 17, lines 16-18, states that erosion of the fiber is fast during 28 days and then decrease, careful examination of Figure 1, shows that at 28 days, about 68% of the fiber has eroded, at 7 days, about 25% of the fiber has eroded; iii) Example 2 does not represent the erosion patern of the fibers; iv) thus, a factual showing is necessary to show the differences in the dissolution of the claimed fiber and the fiber of the Ahola. Regarding applicant's argument against the DE reference, 196 09 551 that has a dissolution of 50 days vs. 21 days, it is noted that applicant has not provided factual evidence that the dissolution rates of the fibers of the DE reference differs from the claimed fibers when the analysis is conducted under the same conditions. The instant specification does not state that the fibers undergo complete dissolution within 21 days or within 5 days. patent ofice does not have laboratory to factually show dissolutions of the claimed fiber and the fiber of the prior art. "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

The declaration under 37 CFR 1.132 filed 6/12/07 is insufficient to overcome the rejection of claims 24-33 based upon Ahola and DE 196 09 551 as set forth in the last Office action because: the declaration has not factually showed dissolution rates of the claimed fiber and the fibers of the prior art references where the rates of dissolution are measured or determined under the same conditions.

